

# Hawaiian Gazette

EST. MODUS IN REBUS.

TUESDAY, APRIL 2, 1889.

## THE DOCUMENTS IN THE CASE.

The following are the papers relating to the organization of the company commonly known as the "sugar trust," to which we made brief reference a few days since. A careful study of these, together with Prof. Dwight's argument for, and Judge Barrett's decision against the legal status of the "trust" arrangement, will enable those familiar with business affairs and commercial organization, to obtain a more intelligent understanding of the merits of the questions now at issue in the New York and California courts, than could be got from any amount of generalized trust apologetics on the one hand, or of anti-trust invective on the other.

### DEED.

#### THE SUGAR REFINERIES COMPANY.

The undersigned, namely: Havemeyer & Elder, The DeCastro and Donner Sugar Refining Company, F. O. Matthiessen & Weichers Sugar Refining Company, Brooklyn Sugar Refining Company, the firm of Dick & Meyer, the firm of Moller, Sierck & Company, North River Sugar Refining Company, the firm of Oxnard Brothers, the Standard Sugar Refinery, the Bay State Sugar Refinery, the Boston Sugar Refining Company, the Continental Sugar Refinery and the Reverse Sugar Refinery, for the purpose of forming the board hereinafter provided for and for other purposes hereinafter set forth, enter into the following agreement:

### NAME.

The board herein provided for shall be designated by the name of The Sugar Refineries Company.

### OBJECTS.

The objects of this agreement are: 1. To promote economy of administration and to reduce the cost of refining, thus enabling the price of sugar to be kept as low as is consistent with a reasonable profit. 2. To give to each refinery the benefit of all appliances and processes known or used by the others, and useful to improve the quality and diminish the cost of refined sugar. 3. To furnish protection against unlawful combinations of labor. 4. To protect against inducements to lower the standard of refined sugars. 5. Generally to promote the interests of the parties hereto in all lawful and suitable ways.

### BOARD.

The parties hereto who are not corporations shall become such before this deed takes effect.

Each corporation subscribing hereto agrees and the parties hereto who are not corporations agree as to the corporations which they are to form, that all the shares of the capital stock of all such corporations shall be transferred to a board consisting of eleven persons, which may be increased to thirteen by vote of the majority of the members of the entire board, the two additional members to belong respectively to the first and second classes hereinafter provided for.

Any member of the board may be removed by vote of two-thirds of the members of the entire board, in case of incapacity or neglect, or refusal to serve.

Any member may resign by filing written notice of his resignation with the secretary of said board.

Vacancies during the term of office of members shall be filled by appointment, by vote of the majority of the members of the entire board.

A member appointed to fill a vacancy shall hold office until the expiration of the term of the member in whose place he is appointed, and such new appointee shall succeed to all the rights, duties and obligations of his predecessor under this deed.

Vacancies by expiration of office shall be filled at the annual meeting of the holders of certificates herein provided for, or at such other times as shall be prescribed by the board.

Such annual meetings shall be held in the city of New York in the month of June, and notice shall be given to each certificate holder of record, of every meeting of certificate holders, by mailing to him at least seven days before said meeting, a notice of the time, place and objects of such meeting. Holders of certificates shall vote according to the number of shares for which they hold certificates. They may vote by proxy.

The board may make by-laws. All arrangements for meetings, elections, and all details not herein specifically provided for, shall be made by the board. A member of the board may act by proxy for any other member with like effect as if he were present and acting.

A majority of the members of the board shall constitute a quorum for the transaction of business. The action of a board meeting, by a majority vote of such meeting, shall have the same effect as the unanimous action of the board, except as herein otherwise provided, and that to authorize the appropriation of money, bonds or shares, shall require the assent either written or expressed by vote, at a board meeting, of at least a majority of the members of the entire board.

No member of the board shall, during the time that he holds office, buy or sell sugar, or be interested directly or indirectly in the purchase or sale of sugar, whether for the purpose of speculation or otherwise, without a vote of a majority of the members of the entire board. For any violation of this provision, he may be removed as a member of the board and shall be liable to account for profits which shall be realized by him to the board for the pro rata benefit of the certificate holders.

As it is desirable that the board shall consist of members who are largely interested in the properties and the business contemplated, it is hereby agreed that all members of the board shall be free to join in or become parties to agreements and transactions which the several boards of directors, hereinafter referred to, or this board, may arrange, to the same extent and in the same man-

ner, and with the like effect, as if they were not members of the board.

The said board may transfer, from time to time, to such persons as it may be desired to constitute trustees or directors or other officers or corporations, so many of the shares as may be necessary for that purpose, to be held by them subject to the provisions of this instrument. Such transfers may be executed by the president and treasurer of the board, in behalf of and as attorneys of the board, for that purpose and to be re-transferred when so requested by the board.

The first board, shall consist of the persons hereinafter mentioned. They shall hold office as follows, and until their successors shall be elected:

### MEMBERS OF THE FIRST CLASS.

Harry O. Havemeyer, F. O. Matthiessen, John E. Seales, Jr., Julius A. Sturtevant, to hold office seven years.

### MEMBERS OF THE SECOND CLASS.

Theodore A. Havemeyer, Joseph B. Thomas, John Jurgensen, Hector C. Havemeyer, with Andrew and Mr. Parsons substituted, to hold office five years.

### MEMBERS OF THE THIRD CLASS.

Charles H. Seiff, William Dick, to hold office three years.

At the expiration of the terms of the third class, and of each successive class, their successors, as members of such class, shall be elected for seven years.

### OFFICERS.

The board shall appoint from its members a president, vice-president and treasurer, and it shall also appoint a secretary, who may or may not be a member of the board. The board may, from time to time, create other offices and appoint the persons to fill them.

It shall designate the duties and prescribe the powers of the several officers and committees.

### PLAN.

The several corporations, parties to this agreement, shall maintain their separate organization, and each shall carry on and conduct its own business.

The capital stock of each corporation shall be transferred to the board, and in lieu of the same, certificates not exceeding fifty millions of dollars, divided into five hundred thousand shares, each of one hundred dollars, shall be issued by the board and distributed as hereinafter provided.

The certificate shall be in the following form:

No. \_\_\_\_\_ Shares.

Shares One Hundred Dollars Each.

THE SUGAR REFINERIES COMPANY.

This is to certify that \_\_\_\_\_ is entitled to \_\_\_\_\_ shares of the Sugar Refineries Company.

This certificate is issued under and subject to the provisions of a deed dated the sixteenth day of August, one thousand eight hundred and eighty-seven.

The shares represented by this certificate are transferable by the holder and his personal representatives in person or by attorney, upon the books of the board, and not otherwise, and only upon the surrender of this certificate.

They entitle the holder to the rights and are subject to the provisions mentioned in the deed.

The interest of the holder is in the proportion of the number of shares represented by this certificate to the entire number of shares outstanding. The total amount represented by outstanding certificates, and the terms of the deed may be changed from time to time by a majority in interest as therein provided.

In witness whereof the board has caused this certificate to be signed by its president and treasurer, and the seal of the board to be affixed hereto, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and eighty-seven.

For value received, \_\_\_\_\_ do hereby assign, transfer and set over unto \_\_\_\_\_ shares of those represented by the within certificate, and \_\_\_\_\_ do hereby constitute and appoint \_\_\_\_\_ attorney, irrevocable, for \_\_\_\_\_ and in \_\_\_\_\_ name and stead, to transfer the said shares upon the books kept for the purpose under the direction of the within board.

The assignee by accepting this transfer assents to the terms of the deed referred to in this certificate as the same shall be changed from time to time.

Witness \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and eighty-seven.

### TITLE.

The shares of the capital stock of the several corporations to be transferred to the board as herein provided shall be transferred to the names of the members of the board as trustees, to be held by them and by their successors as members of the board strictly as joint tenants.

By the death, resignation or removal of any member of the board the whole title shall remain in the others. All members ceasing to be such shall execute such instruments as may be necessary, in any, to keep the title vested in the persons who from time to time shall be members of the board.

The board shall hold the stock transferred to it with all the rights and powers incident to stockholders in the several corporations, and subject only to the purposes set forth in this deed.

### DIVISION OF INTEREST.

The several corporations shall be entitled to the shares in the following proportions of the fifty millions of dollars, viz: \_\_\_\_\_

[Here follow the names of the several corporations.]

Each refinery and the corporation to which it belongs shall be freed from liability and indebtedness by the parties interested in it; or such parties, if the board shall approve, may provide in cash for such indebtedness or liability, leaving the same to stand at the pleasure of the board; except that the employees' contracts shown in the schedules hereto annexed, and the contracts with Havemeyer and Elder, the F. O. Matthiessen and Weichers Sugar Refining Co. and the Bay State Sugar Refinery pending for improvements and enlargements, shall continue as liabilities.

Annexed hereto are schedules in general terms of the properties of the several refineries. The properties are guaranteed to correspond with the schedules by the parties interested therein, who are to make good any deficiency. On the complete execution of this agreement each of the parties shall make a full inventory of the property not embraced in such schedules and useful for the conduct of the business, on hand or contracted for, including raw and refined sugars, molasses, sugars in process, syrups, bone black, fuel barrels, packages, charcoal and other supplies, and such inventory is to be examined and the articles appraised at their present cash value (except as to sugar and molasses to arrive,

which are to be appraised at their market value on arrival) by a committee of five persons, as follows: Theodore A. Havemeyer, F. O. Matthiessen, Julius A. Sturtevant, John E. Seales, Jr., and Joseph B. Thomas.

The value of such property as fixed by four-fifths of the appraisers shall be paid for in cash by the said board to the treasurer of each corporation.

Bone black may, at the option of the board be paid for in cash or in the bonds hereinafter provided for, or in certificates at a rate for bonds or certificates to be fixed by a vote of a majority of the members of the entire board.

The property shall remain with the refinery where it is, to be used by it, except as such refinery shall make a different disposition of it.

In consideration of the transfer of their stock to the board, the said board shall also pay to Havemeyer & Elder the sum of \_\_\_\_\_, to the F. O. Matthiessen & Weichers Sugar Refining Company the sum of \_\_\_\_\_, and to the Bay State Refining Company the sum of \_\_\_\_\_, on account of payments already made on pending contracts for improvements and enlargements.

Additional shares to the amount of \$400,000, less fifteen per cent, to be left with the board as hereinafter provided, shall be received by Moller, Sierck & Co., for improvements and enlargements of capacity of their refinery now in progress, when said improvements are completed, and the increased capacity demonstrated.

The shares assigned to the several refineries shall be distributed by them to and among the parties interested therein.

Each holder of stock in a refinery company shall be entitled to so many of the shares allotted to such refinery as shall be in proportion of his stock to the capital of his company.

Shares for stockholders of any refinery company who shall not surrender their stock, may, under the direction of the board, be deposited for their account with the right to receive the same upon the surrender of their stock.

Of the shares allotted to the several refineries, the board shall leave fifteen per cent with the board, and those shares and any shares not allotted of the fifty millions of dollars, except as herein otherwise provided, shall be subject to be disposed of by the board, either for the acquisition of other refineries to become parties to this deed, payment for additional capacity, or by appropriations to the several refineries.

But in no case shall any appropriation be made to or any action be taken by any corporation without the approval of its board of directors, and no action shall be taken by the board which shall create liability by it or by its members.

### PROFITS.

The profits arising from the business of each corporation shall be paid over by it to the board, hereby created, and the aggregate of said profits, or such amount as may be designated for dividends shall be proportionally distributed by said board, at such times as it may determine, to the holders of the certificates issued by said board for capital stock as hereinbefore provided.

### FISCAL ARRANGEMENTS.

The funds necessary to enable the said board to make the payments herein provided to be made by it, may be raised by mortgage to be made by the corporations or either, any or all of them on their property, and by such other means as shall be satisfactory to such board.

In case any mortgage shall be laid on the property of any corporation by the directors or stockholders the holders of certificates shall, within a time to be fixed by said board, have the right to such uniform rates as said board shall arrange, to have the bonds, certificates or other evidence of debts or interest in proportion to their respective holdings. Any party which shall not be thus taken may be disposed of by said board.

### CHANGES.

The number of shares and the total amount thereof, issuable by said board, may, from time to time, be increased or diminished by deed executed by a majority in value of the certificate holders.

The provisions of this deed may from time to time be changed by deed executed by not less than a majority in interest of the certificate holders, provided no change shall be made which shall discriminate to the disadvantage of the certificate holders as between themselves.

### ACQUISITION OF OTHER REFINERIES.

The capital stock of other sugar refining companies and of companies whose business relates directly or indirectly to sugar refining (in every instance to be incorporated) may be transferred to said board with the consent of a majority thereof at valuations and upon terms satisfactory to it to be held by said board under and subject to all the terms of this deed, and certificates may be issued therefor, and said board may be sold by it to provide funds for such purchase or purchases, and any such corporation or corporations shall thereupon become a party to this deed upon causing the same to be duly signed in its behalf.

### CUSTODY OF DEED.

This deed, when executed by the parties hereto, shall be delivered to the president of the board, who shall have the sole and independent custody and control of the same, and the said deed shall not be shown or delivered to any person or persons whatsoever except by the express direction and order of the board.

A copy of the said deed shall be lodged with the member of the board residing in Boston, Massachusetts, which shall be held by him under the same conditions and in the same manner as the original deed.

In witness whereof the parties hereto set their seals and affixed their names, these presents to become binding when completely executed by all parties, and to take effect from October 1, 1887.

Dated August 16, 1887.

[Here follow signatures.]

Report of the Committee \_\_\_\_\_ on the investigation relative to Trusts. Transmitted to the Legislature, March 6, 1888. (Senate, No. 50.) Pages 644-651.

The Jiji Shimpō says that the authorities in Japan have prohibited public speaking by foreigners outside the treaty limits of the foreign settlements. This action was brought about by a couple of missionaries attempting to deliver addresses in a theatre in Nagasaki, Echigo.

## "AN OBSERVER."

[Communicated.]

Chancing to pick up a copy of the Bulletin a few days old, my eye was caught by an article appearing over the above pseudonym, and purporting to deal with the subject of "Official Dignity." Glancing over the article in question, I was surprised to find the gist of it to be a set of ideas, which I supposed had been discarded and buried in every English-speaking community, long before any of the present generation saw the light. The substance of these ideas is that men holding public office are above criticism, and that the manner in which they may be spoken of, is in no way affected by their personal character, or their official conduct.

This probably respectable, but certainly very absurd person, tells us that he is "more than surprised at the laxity of respect shown by some people in this city, for those to whom are entrusted powers and emblems of government." And further on he says "every blatherskite thinks that the most priceless privilege of his citizenship, is the right to hurl in veetives, neither choice nor refined, against those to whom offices are entrusted. To the ears of a foreigner such conduct is not only disgusting, but abominable."

Here we have a very good illustration of the hopeless muddleheadedness and inability to see facts directly before his eyes, which is characteristic of the ultra conservative fossil. "To the ears of a foreigner such conduct is not only disgusting but abominable." One feels like asking what is meant by such conduct being "not only disgusting but abominable" to the ears of a foreigner, when the foreigners themselves are the very parties whose conduct is complained of.

"An Observer" represents himself as a stranger, "a member of a community where the respect due to office is strictly enforced." He cannot therefore possibly be familiar with, or refer to the slangwhanging of a portion of the native press against the Government, and can only have in mind the things spoken and printed by foreigners. Truly the mental process which with this kind of people passes for logic, is wonderful and past comprehension.

Perhaps we may be a little free and easy in our way of treating and speaking of our public officers, but if we are, there are some very decided advantages connected with the habit of independent thinking and free speaking which seems so shocking to this poor man from over the sea. At all events it is simply unavoidable in a small community where we all, or at least all old residents, know one another pretty thoroughly, too well in fact to afford much field for that awesome and unquestioning attitude of mind and manners which is so earnestly commended to us. In more populous countries, the prince, the senator, or the judge is, to a vast majority of the people, a more or less impersonal abstraction, known and regarded almost entirely in his official or titular relations.

Here it happens that the honorable, the excellency, the judge, the royal highness, and even perhaps the king or prince, are people that we have known all our lives. We got their measure long ago, and a very small measure it was, in some instances. We know that they are people of like passions with ourselves, and some of them considerably more so. We know, not by report, or from the newspapers, but by personal acquaintance, that people with high sounding titles are sometimes made of very common clay. It is impossible that we should go down on our marrow bones, either literally or figuratively, or speak with downcast eyes and bated breath of to or people that have lived in the same small town with us all our lives, that we knew as boys and girls, with whom we competed successfully for prizes in school, whom we have beaten at peg top and marbles, whom we have perhaps thrashed soundly for their juvenile impertinence, and cut out of the affections of their best girls.

We will obey the laws, we will perform the duties of good citizens, we will treat those in office with courtesy and such measure of outward respect as the circumstances seem to require, but we regard them, one and all, as public servants, holding their positions, not to lord it over others, but to do useful and necessary work for the state. We hold it to be both our privilege and our duty to observe their conduct, form our own honest opinions of the way in which they do their work, and of their fitness for the positions

they hold, in respect both to character and ability, and to express those opinions freely and fearlessly, at all proper times and places.

These are the very A. B. C. of political and personal rights, and even should their exercise sometimes run into some excess of latitude, our freedom of speech is infinitely preferable to that abject and slavish attitude which "An Observer" so worships.

That I may not be accused of misrepresenting the views of this "Observer," or of applying to his doctrines epithets stronger than his language warrants, I will insert the following specimen brick: "In my community, the man is taught from early childhood, that office is enshrouded with an inseparable dignity, in fact so much so, that no matter what may be the personal character of the incumbent, or how meagre his intellectual abilities may be, the majesty of his office veils all else in his official position. This is certainly a portion of governmental ethics, that no one can gainsay. Strip the subject of his office's dignity, and yield only that respect which his personal character is worthy of, you sap the very foundation of the institution, and inaugurate a system that speedily leads to an anarchical dissolution."

How is that? "No matter what may be the personal character of the incumbent, or how meagre his intellectual abilities may be, the majesty of his office veils all else, etc." The writer of the above seems to regard free speech and English grammar with equal animosity. I don't believe any school teacher in Honolulu can parse the sentence beginning "Strip the subject," or tell by any known process of construction, what is "the institution" whose foundation will be "sapped." But enough—the matter and the manner are all of a piece, and both are well nigh idiotic.

## REINFORCING OUR WATER SUPPLY.

The experiment made under the direction of the Minister of the Interior Saturday week of pumping water from an artesian well on Beretania street up to the Makiki Reservoir by means of a steam fire engine, was alluded to briefly in Tuesday's ADVERTISER. The experiment, which appears to have given quite satisfactory results, is in accordance with the plan recommended by this paper in an article published on the 5th of last month.

It was there argued that the surest, the most readily available, and, in view of no large storage reservoirs being required, the safest plan for supplementing our water supply in dry times like the present, was to pump the artesian well-water to such a height as would give the necessary head for supplying the wants of the town. The opinion was also expressed that such a plan would be not only safer, but cheaper than the alternative one of accumulating in large storage reservoirs the surplus which, during much of the year, runs to waste, for the purpose of eking out the deficiency occurring in the droughty intervals.

We think the result of Saturday night's work goes to confirm the correctness of our views. In any case we are glad the experiment has been tried: The Minister has now not only theoretical calculations, but somewhat definite practical data on which to base his plans. We now know not only that the thing can be done, but we know, at least approximately, the power required to do it. Knowing that, it need not be difficult to estimate the cost.

The necessity of making some provision for supplying a more abundant flow of water during dry times has long been acknowledged, and some steps have been already taken with a view to meeting the want. Our recent and present experience confirms and emphasizes the teaching of theory. We trust the investigations now being made will speedily lead to important practical results.

## Special Notices.

### MR. W. F. ALLEN.

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